

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MARK EVANS,) No. CV 14-00712-DSF (VBK)
Petitioner,)
v.) ORDER ACCEPTING FINDINGS AND
WARDEN,) RECOMMENDATIONS OF UNITED STATES
Respondent.) MAGISTRATE JUDGE

Pursuant to 28 U.S.C. §636, the Court has reviewed the Petition for Writ of Habeas Corpus ("Petition"), the records and files herein, and the Report and Recommendation of the United States Magistrate Judge ("Report").

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1 **IT IS ORDERED** that: (1) the Court accepts the findings and
2 recommendations of the Magistrate Judge, and (2) the Court declines to
3 issue a Certificate of Appealability ("COA").¹

4 4/1/15

Dale S. Fischer

5 DATED: _____

6 DALE S. FISCHER
7 UNITED STATES DISTRICT JUDGE

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14 ¹ Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability
15 may issue "only if the applicant has made a substantial showing of the
16 denial of a constitutional right." Here, the Court has accepted the
17 Magistrate Judge's finding and conclusion that the abstention doctrine
18 of Younger v. Harris, 401 U.S. 37, 45-46 (1971) is applicable and the
19 Petition is unexhausted. Thus, the Court's determination of whether
20 a Certificate of Appealability should issue here is governed by the
21 Supreme Court's decision in Slack v. McDaniel, 529 U.S. 473, 120 S.
22 Ct. 1595 (2000), where the Supreme Court held that, "[w]hen the
23 district court denies a habeas petition on procedural grounds without
24 reaching the prisoner's underlying constitutional claim, a COA should
25 issue when the prisoner shows, at least, that jurists of reason would
26 find it debatable whether the petition states a valid claim of the
27 denial of a constitutional right and that jurists of reason would find
28 it debatable whether the district court was correct in its procedural
ruling." 529 U.S. at 484. As the Supreme Court further explained:

29 "Section 2253 mandates that both showings be made before the
30 court of appeals may entertain the appeal. Each component
31 of the § 2253(c) showing is part of a threshold inquiry, and
32 a court may find that it can dispose of the application in
33 a fair and prompt manner if it proceeds first to resolve the
34 issue whose answer is more apparent from the record and
35 arguments." Id. at 485.

36 Here, the Court finds that Petitioner has failed to make the
37 requisite showing that "jurists of reason would find it debatable
38 whether the district court was correct in its procedural ruling."